

4529

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF HALIFAX )

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR

77 DHC 3

THE NORTH CAROLINA STATE BAR, )  
 )  
Plaintiff )  
 )  
vs. )  
 )  
JAMES R. WALKER, JR., Attorney, )  
 )  
Defendant )

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This cause was heard before the undersigned Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on May 27, 1977, in the Office of the North Carolina State Bar, 107 Fayetteville Street, Raleigh, North Carolina. The North Carolina State Bar was represented by Harold D. Coley, Jr., North Carolina State Bar Counsel, and C. Christopher Bean, Staff Attorney. The Defendant appeared pro se. The Hearing Committee, after hearing evidence and argument, as appears of record, makes the following Findings of Fact:

(1) The North Carolina State Bar is a body duly organized under the laws of North Carolina, and is the proper party to bring this proceeding under the authority granted in Chapter 84, General Statutes of North Carolina.

(2) The Defendant, James R. Walker, Jr., is a citizen and resident of Halifax County, North Carolina, and was admitted to The North Carolina State Bar in November, 1953, and is and was at all times relevant to this proceeding, an Attorney at Law, licensed to practice in the State of North Carolina and is subject to the Rules, Regulations, Canons of Ethics, and Code of Professional Responsibility of The North Carolina State Bar and the laws of the State of North Carolina.

(3) A duly verified Complaint, setting forth the charges against the Defendant, was filed in the office of The North Carolina State Bar on March 15, 1977. Notice thereof was given to the Defendant by personal service upon the Defendant of a copy of the Complaint, Notice and Summons by the Sheriff of Halifax County on March 17, 1977.

(4) A duly verified Answer to the Complaint was filed in the office of The North Carolina State Bar by the Defendant on May 17, 1977.

(5) The hearing began at 1:00 P. M. and no objection was made by the Defendant who expressly waived any objection to the continuance granted by the Hearing Committee at the request of The North Carolina State Bar upon the case being called at 10:00 A. M. on May 27, 1977.

(6) During 1969, the Defendant was employed by Gladys Thompson to represent her in connection with a dispute over the performance of a construction contract for remodeling work done on her house. Notes and deeds of trust executed by Gladys Thompson and her husband were given in payment for the construction contract about which the dispute centered.

(7) On or about the same time the Defendant was employed by Gladys Thompson, her brother, Edgar Harvey, agreed to pay the Defendant a fee of \$500.00 for services to be rendered to Gladys Thompson. Edgar Harvey subsequently paid the Defendant \$265.00 of the fee.

(8) The dispute giving rise to the employment of the Defendant on behalf of Gladys Thompson involved a determination of the liability of Gladys Thompson for the payment of the sum of approximately \$2,400.00, for work done by Perquimans Construction Company and a counterclaim by Gladys Thompson in connection therewith.

(9) On or about March 27, 1970, the Defendant requested Edgar Harvey to give the Defendant \$1,500.00, in order to pay off the mortgage indebtedness given by Gladys Thompson in connection with the work done on

her house. Pursuant to the Defendant's instructions, Edgar Harvey gave the Defendant, fifteen one-hundred dollar bills and the Defendant gave Edgar Harvey a receipt stating "For pay off note on Gladys Thompson mortgage and attorney fee."

(10) The note was not paid on March 27, 1970, and the Defendant advised Edgar Harvey that the Defendant had returned to the courthouse too late on Friday afternoon (March 27, 1970) to pay off the note.

(11) On or about April 14, 1970, eighteen days after receiving the sum of \$1,500.00 from Edgar Harvey, the Defendant deposited the sum of \$1,136.38 with the Clerk of Superior Court of Perquimans County to be held in trust pending the outcome of the civil action entitled Gladys Thompson vs. Perquimans Construction Company, 69 CVS 3.

(12) On May 30, 1972, Superior Court Judge Bradford Tillery entered an order dismissing the case of Gladys Thompson vs. Perquimans Construction Company, 69 CVS 3.

(13) In July of 1972, the Clerk of Superior Court of Perquimans County, upon application of the Defendant, ordered the return of the sum of \$1,136.38 deposited by the Defendant on April 14, 1970.

(14) At various intervals between 1969 and 1975, Gladys Thompson paid direct to the Defendant approximately \$400.00 for the Defendant's legal fees and expenses.

(15) In the interim between 1969 and 1975, Erie Haste had acquired title to Gladys Thompson's homeplace through foreclosure. During 1975, Gladys Thompson paid Erie Haste the sum of \$2,346.00, and Erie Haste executed a deed to Gladys Thompson for her homeplace which was the subject of the controversy with respect to which the Defendant was employed.

(16) Shortly after Gladys Thompson paid Erie Haste and acquired title to her homeplace, Edgar Harvey contacted the Clerk of Superior Court of Perquimans County and requested a return of the \$1,500 given to the

Defendant on March 27, 1970. Edgar Harvey was told by the Clerk at that time that the Defendant had deposited \$1,136.38, which had been returned to the Defendant in July of 1972.

(17) After talking with the Clerk of Superior Court of Perquimans County in 1975, Edgar Harvey and his wife on numerous occasions tried to contact the Defendant by telephone and sent registered letters to the Defendant requesting an accounting for the money given to the Defendant by Edgar Harvey. The Defendant refused to account to Edgar Harvey for the funds received by the Defendant on March 27, 1970, and Edgar Harvey filed a complaint against the Defendant with The North Carolina State Bar on June 15, 1976.

(18) The Defendant denied before the Hearing Committee that he was under any duty to account to Edgar Harvey for the funds received on March 27, 1970. The Defendant has rendered no written statement for services rendered either to Edgar Harvey or Gladys Thompson.

(19) The Defendant received the sum of at least \$665.00 on account of services rendered to Gladys Thompson.

(20) The Defendant offered evidence tending to indicate that the Defendant devoted many hours work on the behalf of Gladys Thompson. The Defendant offered no creditable evidence as to the value of the services performed or of any definite agreement with respect to the compensation to be received by the Defendant in connection with his services, except for the sum of \$500.00 received as a retainer.

(21) The Defendant failed to segregate the funds received from Edgar Harvey and failed to produce any records or evidence that the Defendant segregated the funds or otherwise kept records of receipts and disbursements made on behalf of Gladys Thompson or Edgar Harvey, except for his unsupported testimony that he thought that he had a trust account, but was not sure whether or not it was still active.

(22) The Defendant intermingled and converted the funds received from Edgar Harvey which were received by the Defendant as a fiduciary.

(23) Gladys Thompson did not demand an accounting from the Defendant for the funds given to him by her brother, Edgar Harvey, but was aware of the demand for an accounting made by Edgar Harvey and considered the funds as belonging to Edgar Harvey and not to her.

(24) The Defendant offered no evidence in support of the allegations contained in Paragraph 5 of the Defendant's Further Answer and Defense.

UPON THE FOREGOING FINDINGS OF FACT, THE HEARING COMMITTEE MAKES THE FOLLOWING CONCLUSIONS OF LAW:

(1) The Defendant upon receipt of the sum of \$1,500.00 from Edgar Harvey as set forth in the foregoing Findings of Fact was under a fiduciary duty to account to Edgar Harvey for application of said funds.

(2) By failing to account to Edgar Harvey for the sum of \$1,500.00 received by the Defendant on March 27, 1970, and by intermingling and converting the funds, the Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Disciplinary Rule 1-102(A)(4) of the Code of Professional Responsibility.

(3) Failing to account either to Edgar Harvey or Gladys Thompson for the application of the sum of \$1,500.00 given to the Defendant by Edgar Harvey on March 27, 1970, the Defendant engaged in professional conduct that adversely reflects on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(6) of the Code of Professional Responsibility.

(4) The Defendant did not violate the provisions of Disciplinary Rule 9-102(b)(4) due to the fact that the funds deposited with him were not deposited by his client, Gladys Thompson, but by her brother, Edgar Harvey, and Gladys Thompson did not demand an accounting from the Defendant on behalf of Edgar Harvey or herself.

This the 27th day of MAY, 1977.

E. James Moore  
E. James Moore, Chairman

Dudley Humphrey  
Dudley Humphrey

Phillip Ellen  
Phillip Ellen